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United States Department of Labor, Plaintiff

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HILDA L. SOLIS, ¹ Secretary of the United States Department of Labor,)	Case No.: C08-05643 RMW
)	
Plaintiff,)	PROPOSED ORDER GRANTING MOTION
v.)	FOR DEFAULT JUDGMENT AGAINST
)	DEFENDANTS MICHAEL D. WILLIAMS
)	AND POWER & DATA TECHNOLOGY,
MICHAEL D. WILLIAMS, an individual;)	INC.
POWER & DATA TECHNOLOGY, INC., a)	
California corporation; and POWER & DATA)	
TECHNOLOGY, INC., 401(K) PROFIT)	
SHARING PLAN, an employee pension)	
benefit plan,)	
)	
Defendants.)	
)	

¹ Hilda L. Solis was confirmed as Secretary of Labor on February 24, 2009, and is substituted as Plaintiff in this action. See Fed. R. Civ. P. 25(d)

1 Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor (the
2 “Secretary”), brought this action against Defendants Michael D. Williams, an individual; Power
3 & Data Technology, Inc., a California corporation and the Power & Data Technology, Inc.,
4 401(K) Profit Sharing Plan, an employee pension benefit plan,² for violations of the Employee
5 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001-1191c. The Defendants
6 failed to timely answer the Complaint and, on August 17, 2009, the Clerk of this Court issued an
7 Entry of Default in this matter.

8 Upon review of the moving papers, the record, and for good cause shown, it is hereby
9 ORDERED, ADJUDGED, and DECREED that:

10 1. The Secretary’s Motion for Default Judgment Against Defendants Michael D.
11 Williams, an individual, and Power & Data Technology, Inc., a California corporation, is granted
12 in full; and that judgment is entered in favor of the Secretary against Defendants Michael D.
13 Williams, an individual, and Power & Data Technology, Inc., a California corporation, finding
14 that said Defendants, acting in their fiduciary capacities:

15 a. failed to act solely in the interest of the participants and beneficiaries of
16 the Plan and for the exclusive purpose of providing benefits to participants and their
17 beneficiaries and defraying reasonable expenses of Plan administration, in violation of
18 ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

19 b. failed to discharge their duties with respect to a plan with the care, skill,
20 prudence, and diligence under the circumstances then prevailing that a prudent man
21 acting in a like capacity and familiar with such matters would use in the conduct of an
22 enterprise of a like character and with like aims, as required by ERISA § 404(a)(1)(B), 29
23 U.S.C. § 1104(a)(1)(B).

24
25 ²The Plan was named as a Defendant pursuant to Rule 19(a) of the Federal Rules of Civil
Procedure solely to assure that complete relief can be granted.

1 c. failed to act in accordance with the documents and instruments governing
2 the plan as required by ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

3 d. caused the Plan to engage in transactions which they knew or should have
4 known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in
5 interest, of assets of the Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. §
6 1106(a)(1)(D); and

7 e. dealt with assets of the Plan in their own interests, in violation of ERISA §
8 406(b)(1), 29 U.S.C. § 1106(b)(1).

9 2. Said judgment is in the amount of \$39,325.62 in missing Plan assets, plus
10 \$6,865.46 in pre-judgment interest as of January 15, 2010, to compensate the Plan for lost
11 opportunity costs; for a total of \$46,191.08;

12 3. Additional pre-judgment interest is awarded through the date of entry of
13 judgment, at the rate provided by IRC § 6621(a);

14 4. Post-judgment interest is awarded through the date of collection pursuant to 28
15 U.S.C. § 1961;

16 5. An independent fiduciary shall be appointed by the Court upon motion of the
17 Secretary to administer the Plan, with duties including but not limited to: to conduct an
18 accounting of the Plan; to distribute the Plan's assets to eligible participants and beneficiaries
19 upon request; and ultimately terminate the Plan, when appropriate, and conclude any Plan-related
20 matters connected with the proper termination of the Plan.

21 a. The independent fiduciary shall have all the rights, duties and discretion of
22 a trustee/fiduciary under ERISA.

23 b. The independent fiduciary shall have full access to all data, information
24 and calculations in the Plan's and the Plan Administrator's possession or control.

25 c. The Defendants are ordered to fully cooperate with the independent
fiduciary's reasonable requests in connection with the proper administration and
termination of the Plan.

1 6. Defendants are required to pay for all costs associated with the appointment and
2 retention of the independent fiduciary.

3 7. Upon the effective date of the appointment of the independent fiduciary,
4 Defendants Michael D. Williams, an individual, and Power & Data Technology, Inc., a
5 California corporation, are removed as fiduciaries to the Plan.

6 8. Defendant Michael D. Williams is permanently enjoined from serving as a
7 fiduciary or service provider to any ERISA-covered employee benefit plan;

8 9. The Secretary is awarded costs of service of \$946.00 pursuant to Federal Rule of
9 Civil Procedure 4(d)(2)(A).

10 Although defendant Williams appeared at the hearing and was given
11 the opportunity to speak, he did not challenge the amount of
12 damages sought.

13 Dated: 3/5/10


UNITED STATES DISTRICT JUDGE

14 Presented by:
15 UNITED STATES DEPARTMENT OF LABOR

16 Deborah Greenfield
17 Acting Deputy Solicitor

18 Lawrence Brewster
19 Regional Solicitor

20 Danielle L. Jaberg
21 Counsel for ERISA

22 By: /s/ Evan H. Nordby
23 Evan H. Nordby
24 Trial Attorney

25 Dated: January 15, 2010